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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,926	12/09/2003	Philip J. Robinson	18388 USA	6652
27081	7590	10/05/2005	EXAMINER	
OWENS-ILLINOIS, INC. ONE SEAGATE, 25-LDP TOLEDO, OH 43666			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/731,926	Applicant(s) ROBINSON, PHILIP J.	
	Examiner James N. Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) ☐ Claim(s) ____ is/are allowed.

6) ☒ Claim(s) 1-13 is/are rejected.

7) ☐ Claim(s) ____ is/are objected to.

8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. ____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 4/04, 5/05, 12/03.

4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claims 5-6 are drawn to a "closure," but depend from an independent claim drawn to a "molded plastic closure."

The preamble of claim 10 does not limit an apparatus, instead disclosing "According to claim 8."

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Kusz US 5,687,863.

Kusz '863 teaches a container comprising a container with a threaded neck and lugs, and a closure with inner and outer sidewalls, and locking lugs with a U-shaped recess.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3727

6. Claims 1-4, 7-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson US 5,915,576 in view of Kusz US 5,687,863.

Robinson '576 teaches a container comprising a container with a threaded neck and lugs, and a closure with inner and outer sidewalls, and locking lugs but fails to teach the lugs with a U-shaped recess.

Kusz '863 teaches lugs with a U-shaped recess.

Both references are drawn to squeeze and turn lids whereby radial compression of the cap displaces internally disposed flanges radially outward, beyond engagement with container neck lugs.

One having ordinary skill will recognize the interchangeability of the two technologies.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lugs of Robinson '576, providing the lugs taught by Kusz '863, because the two means are mechanical expedients equally capable of providing child resistance to a threaded container.

7. Claims 5-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson US 5,915,576 in view of Kusz US 5,687,863 as applied above to claim 4 and further in view of Gargione US 5,706,963.

Robinson '576 does not teach tapering of the container cap.

Gargione '963 teaches a container cap with an outwardly tapered sidewall (1c).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Robinson '576, providing an outward taper, as taught by Gargione '963 because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson US 5,915,576 in view of Kusz US 5,687,863 as applied above to claim 8 and further in view of Thorncock et al. US 4,948,002.

Robinson '576 does not teach an oval container, and therefore does not teach the container lugs being located diametrically opposed to a minor axis of the container.

Art Unit: 3727

Thorncock '002 teaches an oval container (14) with anti-rotation lugs (28) diametric on the container minor axis.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Robinsin '576, forming it in the shape of an oval, as taught by Thorncock '002 because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Furthermore, it would have been obvious to locate the lugs diametric on the minor axis because it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kusz US 5,687,863 in view of Robinson US 5,915,576.

Kusz '863 fails to teach a gasket, but does disclose a plug sealing flange (82).

Robinson '576 teaches a sealing gasket (32) and discloses in col. 4, lines 27-29 the gasket may alternatively be a linerless plug closure, thus teaching the equivalence of plug seals and sealing gaskets.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Kusz '863, replacing the plug sealing flange with a sealing gasket, as taught to be an acceptable alternative sealing means by Robinson '576.

10. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson US 5,915,576 in view of Thorncock et al. US 4,948,002.

Robinson '576 teaches a threaded container neck with ramp shaped locking lugs, but does not teach an oval container, and therefore does not teach the container lugs located parallel to a minor axis of the container.

Thorncock '002 teaches an oval container (14) with anti-rotation lugs (28) diametric on the container minor axis.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Robinsin '576, forming it in the shape of an oval, as taught by Thorncock

Art Unit: 3727

'002 because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Furthermore, it would have been obvious to locate the lugs diametric on the minor axis because it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: See attached PTO-892 citing relevant references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
PRIMARY EXAMINER